Update on Michigan Medical Marihuana Act Handouts

- Medical Marihuana Power Point
- ProCon.org Website
- Application for Leave to Appeal
  - Ter Beek v. City of Wyoming – April 3, 2013
- Registry Statistics from LARA
- Revised Application from LARA
- Michigan Supreme Court Decision
  - State of Michigan v. McQueen – February 8, 2013
- Michigan Supreme Court Decision
  - People v. Koon – May 21, 2013

An Update on Michigan's Medical Marihuana Act

Presented by:
Kenneth Stecker
Prosecuting Attorneys Association of Michigan

Federal Law

- The Federal Controlled Substance Act (CSA) classifies marihuana as a Schedule 1 drug, meaning that Congress recognizes no acceptable medical use for it, and its possession is generally prohibited.
- As a federal court in Michigan recently recognized, "It is indisputable that state medical marihuana laws do not, and cannot supersede federal laws that criminalize the possession of marihuana." *United States v. Hicks,* United States District Court, E.D. of Michigan, 2010.

Drug Enforcement Administration's Position-June 21, 2011

- Marihuana has a high potential for abuse.
- Marihuana has no currently accepted medical use in treatment in the United States.
- Marihuana lacks accepted safety for use under medical supervision.
- http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0708.htm

D.C. Circuit Court of Appeals in *Americans for Safe Access v. Drug Enforcement Administration*- Decided January 22, 2013

November 2012 Ballot Initiatives-Nationally

- **Oregon**- sought to legalize and regulate the cultivation, possession and sale of unlimited amounts of marihuana. **Defeated – 56% opposed 44% supported**
- **Colorado**-initiative allows those 21 years of age and older to possess up to one ounce of marihuana and cultivate six marihuana plants. The initiative also allows for over-the-counter sale of marihuana, reduces penalties for larger possession charges and legalizes hemp farming. **Passed- 55% supported 45% opposed.**
- **Washington-** allows adults 21 and over to purchase marihuana from state-licensed and state-regulated businesses. Creates a regulatory system, much like the liquor control system, in which a board oversees licensing of marihuana producers, processors and retailers, and imposes an excise tax of 25% at each step. **Passed 56% supported 44% opposed.**

Medical Marihuana Trends in USA

- 1996 - California
- 1998 – Alaska, Oregon & Washington
- 1999 – Maine
- 2000 – Colorado, Hawaii & Nevada
- 2004 – Montana & Vermont
- 2006 – Rhode Island
- 2007 – New Mexico
- 2008 – Michigan
- 2010 – Arizona, DC & New Jersey
- 2011 – Delaware
- 2012 – Connecticut, Massachusetts

Dispensary States

- Arizona
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Maine
- Massachusetts
- New Jersey
- New Mexico
- Rhode Island
- Vermont

John Ter Beek v. City of Wyoming, No. 306240 (Mich. App., July 31, 2012)

- Thus, while Congress can criminalize all uses of medical marihuana, it cannot require the states to do the same.
- Accordingly, Michigan is not required to criminalize all uses of medical marihuana and the immunity afforded to the medical use of marihuana by MCL 333.26424(a) is permissible.
- Therefore, we conclude that the immunity provision of MCL 333.26424(a) is not preempted by the CSA because it only grants immunity from state prosecution and, therefore, does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

John Ter Beek v. City of Wyoming, No. 145816 (Mich. Sup. Ct., April 3, 2013)

- (1) Whether the defendant city's zoning code ordinance, which prohibits any use that is contrary to federal law, state law, or local ordinance, is subject to state preemption by the Michigan Medical Marihuana Act (MMMA)
- (2) If so, whether the MMMA is subject to federal preemption by the federal Controlled Substances Act (CSA), 21 USC 801 *et seq.*, on either impossibility or obstacle conflict preemption grounds. See 21 USC 903

Registry Statistics

- Applications received as of **3/29/2013**
- **378,525** original and renewal applications received since April 6, 2009
  - **130,429** active registered qualified patients
  - **27,011** active registered qualified primary caregivers patients
- **35, 280** applications denied
  - Reason for denial typically is that application is incomplete – missing photo; missing physician certification; application form incomplete; insufficient fee
  - Some denied because medical condition is not covered such as depression or high heel pain
  - Currently, LARA is processing valid original and renewal applications and issuing the registry identification cards within the 20 day statutory time period.

Changes in the Application Process-April 1, 2013

- Require an applicant for a registry ID card to submit proof of Michigan residency by providing a copy of driver license, State ID card, or voter registration
- Require LARA to issue a registry ID card within five business days of approving an application or renewal rather than within 5 days
- Provide that registry ID card would expire 2 years, rather than 1 year, after it was issued
- Authorize LARA to contract with a private entity to assist LARA in processing and issuing registry ID cards.

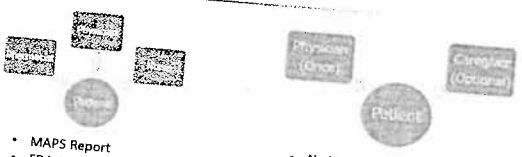
Michigan Medical Marihuana Act

Bona Fide Physician-Patient Relationship-April 1, 2013

- (1) The physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
- (2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.
- (3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.
- (4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the use of medical marihuana to treat that condition.

Michigan Medical Marihuana Act

Comparison with Prescriptions



- MAPS Report
- FDA Approval for drug
- DEA License for drug manufacturer
- DEA License for Physician
- DEA License for Pharmacist
- State License for Physician
- State License for Pharmacist
- State License for Nurse

- No MAPS Report
- No FDA Approval for drug
- No regulation for manufacturer
- No DEA License for Physician
- No Pharmacist
- No license for caregiver
- No requirement for physician to have contact with caregiver

Michigan Medical Marihuana Act

Benefit of Participation in the Registry Identification Program

- A registered "Qualifying Patient" is allowed to possess an amount of marihuana that does not exceed 2.5 ounces of usable marihuana and allowed to cultivate 12 marihuana plants kept in an enclosed, locked facillty.
- Either the Qualifying Patient or the Primary Caregiver can be allowed to possess the marihuana plants.
- A qualifying registered patient is protected from "arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau" for medicinal use or possession of marihuana.

Michigan Medical Marihuana Act

Protection from Arrest, April 1, 2013

- Require a qualifying patient or primary caregiver to present both his or her registry identification card *and* a valid driver license or government-issued photo ID card, in order to be protected from arrest.

Michigan Medical Marihuana Act

What Does This Mean?

- The Michigan Medical Marihuana Act does not create any sort of affirmative *right* under state law to use or possess marihuana.
- The Act does not repeal any drug law contained in the public health code, and all persons in this state remain subject to them.
- The Act merely provides a procedure through which seriously ill people using marihuana can be identified and protected from prosecution under state law.

Michigan Medical Marihuana Act

Medical Use

- The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating condition or symptoms. MCL 333.26423(e).

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- The Michigan Supreme Court clearly stated on page 10 that: "In contrast to several other states' medical marihuana provisions, the MMMA does not explicitly provided for businesses that dispense marihuana to patients."

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- First, the Court held that "The definition of 'medical use' in Section 3(e) of the MMMA includes the sale of marihuana."
- The Court noted that "Section 7(a) of the act requires any medical use of marihuana to occur in accordance with the provisions of the MMMA."

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- "Absent a situation triggering the affirmative defense of Section 8 of the MMMA, Section 4 sets forth the requirements for a person to be entitled to immunity for the 'medical use' of marihuana."
- "It is entitlement to that immunity-not the definition of 'medical use'-that demonstrates that the person's 'medical use' of marihuana is in accordance with the MMMA."

Michigan Medical Marihuana Act

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- "The text of Section 4(d) establishes that the MMMA intends to allow a qualifying patient or primary caregiver to be immune from arrest, prosecution, or penalty **only** if conduct related to marihuana is for the purpose of alleviating **the** qualifying patient's debilitating medical conditions or symptoms."
- "If the medical use is for some **other** purpose-even to alleviate the medical condition or symptoms of a **different registered qualifying patient**-then the presumption of immunity attendant to the medical use of marihuana has been rebutted."

Michigan Medical Marihuana Act

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- "Thus, § 4 immunity does not extend to a registered qualifying patient who transfers marihuana to another registered qualifying patient for the transferee's use because the transferor is not engaging in conduct related to marihuana for the purpose of relieving **the transferor's own** condition or symptoms."

Michigan Medical Marihuana Act

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- "Similarly, § 4 immunity does not extend to a registered primary caregiver who transfers marihuana for any purpose other than to alleviate the condition or symptoms of a specific patient **with whom the caregiver is connected through the MDCH's registration process."**

People v Green, No. 308133 (Mich. App., January 29, 2013)

- The Court held that "Unlike the sale of marihuana, the delivery or transfer of marihuana, absent the exchange of compensation, is specifically included in the MMMA's definition of 'medical use.'
- Thus, the circumstances present in this case are distinguishable from the circumstances in *McQueen*.
- Further, the MMMA does not place any restrictions on the transfer or delivery of marihuana between adult patients, and we decline to read any such restriction into the act."

People v. Bylsma, No. 144120 (Mich. Sup. Ct., December 19, 2012)

- "Section 4 does not allow the collective action that defendant has undertaken because only one of two people may possess marihuana plants pursuant to §§ 4(a) and 4(b): a registered qualifying patient or the primary caregiver with whom the qualifying patient is connected through the registration process of the Michigan Department of Community Health (MDCH).
- Because defendant possessed more plants than § 4 allows and he possessed plants on behalf of patients with whom he was *not* connected through the MDCH's registration process, defendant is not entitled to § 4 immunity."
- However, "The Court of Appeals erred when it concluded that defendant was not entitled to assert the § 8 affirmative defense solely because he did not satisfy the possession limits of § 4."

Enclosed, Locked Facility-April 1, 2013

A closet, room, or **other comparable, stationary, and fully enclosed area** equipped with secured locks or other **functioning** security devices that permit access only by a registered primary caregiver or registered qualifying patient. MCL 333.26423(d).

Michigan Medical Marihuana Act

Enclosed, Locked Facility-Plants Grown Outdoors-April 1, 2013

- Not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within stationary structure that is enclosed on all sides
- Conditional on where you live and not seen by the unaided eye-the exceptions would be for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground
- Located on land that is owned, leased, or rented by either the registered qualifying patient or the registered primary caregiver
- Equipped with functioning locks or other security devices restricting access only to the registered qualifying patient or the registered primary caregiver.

Michigan Medical Marihuana Act

Transportation of Plants-Motor Vehicle-April 1, 2013

- The vehicle is being used temporarily to transport living marihuana plants from 1 location to another with the intent to permanently retain those plants at the second location
- An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through the departmental registration process as the primary caregiver for the registered qualifying patient.

Michigan Medical Marihuana Act

Transporting "Usable Marihuana"-in a Motor Vehicle-December 27, 2012

- Enclosed in a case that is carried in the trunk of a vehicle
- Enclosed in a case that is not readily accessible from the interior of the vehicle, if the vehicle in which the person is traveling does not have a trunk
- Misdemeanor-93 days or a fine of not more than $500.00, or both.

Michigan Medical Marihuana Act

In the Presence or Vicinity

"A person shall not be subject to arrest or prosecution, solely for being in the presence or vicinity of the medical use of marihuana, or for assisting a registered qualifying patient with using or administering marihuana." MCL 333.26424(i).

Michigan Medical Marihuana Act

State of Michigan v. McQueen, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- "In this context, the terms "using" and "administering" are limited to conduct involving the actual ingestion of marihuana. Thus, by its plain language, § 4(i) permits, for example, the spouse of a registered qualifying patient to assist the patient in ingesting marihuana, regardless of the spouse's status. However, § 4(i) does not permit defendants' conduct in this case."
- "The transfer, delivery, and acquisition of marihuana are three activities that are part of the 'medical use' of marihuana that the drafters of the MMMA chose **not** to include as protected activities within Section 4(i)."
- "Defendants transferred and delivered marihuana to patients by facilitating patient-to-patient sales; in doing so, they assisted those patients in acquiring marihuana."

Michigan Medical Marihuana Act

No Probable Cause

The possession or application for a registry identification card does not constitute probable cause or reasonable suspicion and can not be used to support the search of the person or property of an individual who possesses or applies for a card, or otherwise subject the person to inspection by local, county, or state governmental agencies. MCL 333.26426(g).

People v. Anthony Brown, No. 303371 (Mich. App., August 28, 2012)

- The Court held "That to establish probable cause, a search-warrant affidavit need not provide facts from which a magistrate could conclude that a suspect's marihuana-related activities are specifically not legal under the MMMA."
- "Defendant has presented no authority indicating that for probable cause to exist, there must be a substantial basis for inferring that defenses do not apply."

People v Koon, No. 145259 (Mich. Sup. Ct., May 21, 2013)

- The Michigan Supreme Court ruled that "The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marihuana in his or her system but is not otherwise under the influence of marihuana inescapably conflicts with MCL 257.625(8), which prohibits a person from driving with any amount of marihuana in her or system."
- "Under the MMMA, all other acts and parts of acts inconsistent with the MMMA do not apply to the medical use of marihuana. Consequently, MCL 257.625(8) does not apply to the medical use of marihuana."
- Therefore the Michigan Court held that the "Court of Appeals incorrectly concluded that defendant could be convicted under MCL 257.625(8) without proof that he had acted in violation of the MMMA by operating a motor vehicle while under the influence of marihuana."

People v Koon, No. 145259 (Mich. Sup. Ct., May 21, 2013)

- The Supreme Court indicated in its opinion, "As the Legislature contemplates amendments to the MMMA, and to the extent it wishes to clarify the specific circumstances under which a registered patient is per 'under the influence' of marihuana, it might consider adopting a 'legal limit,' like that applicable to alcohol, establishing when a registered patient is outside the MMMA's protection."
- The Supreme Court mentioned Washington's legal limit of 5 ng/ml as an example.

People v Feezel, No. 138031 (Mich. Sup. Ct., June 8, 2010)

- The Court ruled that 11-Carboxy-THC ("TCOOH") is not a derivative of marihuana.
- In doing so, the *Feezel* Court removed 11-Carboxy-THC ("TCOOH") from the list of Schedule 1 "controlled substances" that can be considered under MCL 257.625(8).

Statutory Affirmative Defense-Section 8

MCL 333.26428(a) states that "Except as provided in Section 7, a patient and a patient's primary caregiver, if any, may assert, the medical purpose for using marihuana as a defense to any prosecution involving marihuana."

Evidentiary Hearing

- Pursuant to MCL 333.26428(a)(3), "A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a)."

Michigan Medical Marihuana Act

Element #1 Under Section 8: Physician's Statement

A physician (Licensed M.D./D.O.) has stated that:

- In the physician's professional opinion
- After having completed a full assessment of the patient's medical history and patient's medical condition
- Which assessment was made in the course of a bona-fide physician-patient relationship
- That the patient is likely to receive therapeutic or palliative benefit
- From the medical use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Michigan Medical Marihuana Act

Element #2 Under Section 8: Reasonably Necessary Quantity

The patient and the patient's primary caregiver, if any, were collectively:

- In possession of a quantity of marihuana that was:
- Not more than was reasonably necessary
- To ensure the uninterrupted availability of marihuana
- For the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Michigan Medical Marihuana Act

Element #3 Under Section 8: Medical Use

The patient and the patient's primary caregiver

- Were engaged in the:
- Acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Michigan Medical Marihuana Act

People v. Kolanek, and People v. King, Nos. 142712 and 142695 (Mich. Sup. Ct., May 31, 2012)-Holding #1

- Persons who do not qualify for immunity under §4 (whether because unregistered at the time or because in possession of too much marihuana or not in an enclosed locked facility) may still raise a §8 defense that their possession of marihuana was for medical purposes; the §4 factors need not be shown to have a valid affirmative defense under §8.

Michigan Medical Marihuana Act

People v. Kolanek, and People v. King, Nos. 142712 and 142695 (Mich. Sup. Ct., May 31, 2012)-Holding #2

- A defendant who moves for dismissal of criminal charges under §8 must raise the defense in a pretrial motion and evidentiary hearing, and has the burden of proof at the hearing; the §8 defense may not be raised for the first time at trial.

Michigan Medical Marihuana Act

People v. Kolanek, and People v. King, Nos. 142712 and 142695 (Mich. Sup. Ct., May 31, 2012)-Holding #3

- The defendant is entitled to dismissal of criminal charges if at the hearing he establishes all the elements of a §8 defense, including a statement from a physician in the course of a bona fide physician-patient relationship.

People v. Kolanek, and People v. King, Nos. 142712 and 142695 (Mich. Sup. Ct., May 31, 2012)-Holding #4

- The physician's statement must have been obtained after enactment of the MMMA but before the commission of the offense.

People v. Kolanek, and People v. King, Nos. 142712 and 142695 (Mich. Sup. Ct., May 31, 2012)-Holding #5

- If there are no questions of fact and no jury could reasonably find a §8 defense, the motion to dismiss must be denied and the defendant may not present the §8 defense to the jury.

Legal Issue #1

- Can an individual cultivate, distribute, or possess medical marihuana if he/she lives in a school zone?

Michigan Medical Marihuana Act

Drug Free School Zone

- Neither a patient nor their caregiver can cultivate, distribute, or possess marihuana within the federal 1000-foot Drug Free School Zone.
- MCL 333.7410(4)-An individual 18 years of age or over who violates section 7403(2)(a)(v)(d) by possessing a marihuana on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7403(2)(a)(v)(d).

Michigan Medical Marihuana Act

Legal Issue #2

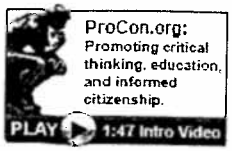
- Does a qualifying patient or primary caregiver have to maintain the plants at their primary residence or can it be a secondary location?

Michigan Medical Marihuana Act

No Requirements

- There is no requirement that a qualifying patient or primary caregiver maintain the plants at their residence. Where the individual maintains the plants may eventually be limited by zoning laws, the Michigan Medical Marihuana Act, and federal law.

Michigan Medical Marihuana Act



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Last updated on: 5/13/2013 3:19:46 PM PST

18 Legal Medical Marijuana States and DC

Laws, Fees, and Possession Limits

I. Summary Chart | II. Details by State | III. Sources

Medical Marijuana Home

Featured Resources

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3. Did You Know?
4. Historical Timeline
5. Comments

+Pros & Cons by Category

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21. 2012 Presidential Candidates' Positions on Medical Marijuana

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22. Source Biographies
23. Glossary
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+ Additional Resources

I. Summary Chart: 18 states and DC have enacted laws to legalize medical marijuana

State	Year Passed	How Passed (Yes Vote)	Fee	Possession Limit	Accepts other states' registry ID cards?
1. **Alaska**	1998	Ballot Measure 8 (58%)	$25/$20	1 oz usable; 6 plants (3 mature, 3 immature)	unknown[1]
2. **Arizona**	2010	Proposition 203 (50.13%)	$150/$75	2.5 oz usable; 0-12 plants[2]	Yes[3]
3. **California**	1996	Proposition 215 (56%)	$66/$33	8 oz usable; 6 mature or 12 immature plants[4]	No
4. **Colorado**	2000	Ballot Amendment 20 (54%)	$35	2 oz usable; 6 plants (3 mature, 3 immature)	No
5. **Connecticut**	2012	House Bill 5389 (96-51 House, 21-13 Senate)	*	One-month supply (exact amount to be determined)	No
6. **DC**	2010	Amendment Act B18-622 (13-0 vote)	$100/$25	2 oz dried; limits on other forms to be determined	No
7. **Delaware**	2011	Senate Bill 17 (27-14 House, 17-4 Senate)	$125	6 oz usable	Yes[5]
8. **Hawaii**	2000	Senate Bill 862 (32-18 House; 13-12 Senate)	$25	3 oz usable; 7 plants (3 mature, 4 immature)	No
9. **Maine**	1999	Ballot Question 2 (61%)	No fee	2.5 oz usable; 6 plants	Yes[6]
10. **Massachusetts**	2012	Ballot Question 3 (63%)	TBD[7]	Sixty day supply for personal medical use	unknown
11. **Michigan**	2008	Proposal 1 (63%)	$100/$25	2.5 oz usable; 12 plants	Yes
12. **Montana**	2004	Initiative 148 (62%)	$25/$10	1 oz usable; 4 plants (mature); 12 seedlings	No
13. **Nevada**	2000	Ballot Question 9 (65%)	$200 +fees	1 oz usable; 7 plants (3 mature, 4 immature)	No
14. **New Jersey**	2010	Senate Bill 119 (48-14 House; 25-13 Senate)	$200/$20	2 oz usable	No
15. **New Mexico**	2007	Senate Bill 523 (36-31 House; 32-3 Senate)	$0	6 oz usable; 16 plants (4 mature, 12 immature)	No
16. **Oregon**	1998	Ballot Measure 67 (55%)	$200/$100[8]	24 oz usable; 24 plants (6 mature, 18 immature)	No
17. **Rhode Island**	2006	Senate Bill 0710 (52-10 House; 33-1 Senate)	$75/$10	2.5 oz usable; 12 plants	Yes
18. **Vermont**	2004	Senate Bill 76 (22-7) HB 645 (82-59)	$50	2 oz usable; 9 plants (2 mature, 7 immature)	No
19. **Washington**	1998	Initiative 692 (59%)	**	24 oz usable; 15 plants	No

Notes:

a. **Residency Requirement** - 16 of the 18 states require proof of residency to be considered a qualifying patient for medical marijuana use. Only Oregon has announced that it will accept out-of-state applications. It is unknown if Delaware will accept applications from non-state residents once the program is established.

b. **Home Cultivation** - Karen O'Keefe, JD, Director of State Policies for Marijuana Policy Project (MPP), told ProCon.org in a February 21, 2013 email that "Some or all patients and/or their caregivers can cultivate in 15 of the 18 states. Home cultivation is not allowed in Connecticut, Delaware, New Jersey, or the District of Columbia and a special license is required in New Mexico. In Arizona, patients can only cultivate if they lived 25 miles or more from a dispensary when they applied for their card. In Massachusetts, patients can only cultivate until the department issues regulations unless they get a hardship waiver."

c. **Patient Registration** - Karen O'Keefe stated the following in a Nov. 7, 2012 email to ProCon.org:

> "Affirmative defenses, which protect from conviction but not arrest, are or may be available in several states even if the patient doesn't have an ID card: Rhode Island, Michigan, Colorado, Nevada, Oregon, and, in some circumstances, Delaware. Hawaii also has a separate 'choice of evils' defense. Patient ID cards are voluntary in Maine and California, but in California they offer the strongest legal protection. In

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Last updated on: 5/17/2013 3:55:15 PM PST

12 States with Pending Legislation to Legalize Medical Marijuana

(as of May 9, 2013)

I. 12 States with Pending Legislation to Legalize Medical Marijuana

1. **Alabama**
2. **Illinois**
3. **Iowa**
4. **Kansas**
5. **Kentucky**
6. **Minnesota**
7. **Missouri**
8. **Ohio**
9. **Pennsylvania**
10. **New Hampshire**
11. **New York**
12. **West Virginia**

II. Four States with Legislation Tied to Favorable Towards Medical Marijuana But Would Not Legalize Its Use

1. **Maryland** 2. **Minnesota** 3. **Oklahoma** 4. **Texas**

III. Seven States with Failed Legislation

1. **Alabama** 2. **Florida** 3. **Maryland** 4. **Mississippi** 5. **North Carolina** 6. **Oklahoma** 7. **South Dakota**

I. States with Pending Legislation to Legalize Medical Marijuana

1. Alabama

House Bill:
HB 315 (45 KB)

Summary

This bill would establish a medical exemption for the personal use and possession of marijuana only for certain qualifying patients who have been diagnosed by a physician as having a serious medical condition and been issued a valid medical marijuana identification card.

History (last action date)

Introduced by Rep. Patricia Todd (D), received first reading, and assigned to Health committee **(Feb. 21, 2013)**

2. Illinois

House Bill:
338 2K

ProCon.org

Summary

Compassionate Use of Medical Cannabis Pilot ACT concerning alternative s diseases causing chronic conditions."

History (last action date)

Pre-filed by Rep. Lou Lang (D) on Jan. 6, 2013; First reading and referred to Rules Committee on Jan. 9, 2013; Assigned to Human Services Committee

on Feb. 27, 2013; Committee voted 11-4 to send to House floor for a full vote on Mar. 6, 2013; Second reading and placed on calendar for third reading on Mar. 7, 2013; Passed the House by a vote of 61-57 on Apr. 17, 2013; Sent to the Senate and referred to Assignments Committee on Apr. 8, 2013; Passed Senate on 3rd reading 35-21 and sent to Governor Pat Quinn **(May 17, 2013)**

House Bill:
HB 1076 (45 KB)

"Creates the Compassionate Use of Medical Cannabis Pilot Program Act. Contains only a short title provision and a section on findings. Makes findings on the medical use of cannabis to treat medical conditions. "

Introduced by Rep. Lou Lang (D), received first reading, and referred to Rules Committee **(Jan. 30, 2013)**

3. Iowa

Senate File:
SF 79 (100 KB)

Summary

"A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty... for the medical use of marijuana... provided the marijuana possessed by the qualifying patient: a. Is not more than two and one-half ounces of usable marijuana... b. does not exceed six

History (last action date)

Introduced by Sen. Bruce Hunter (D), referred to Human Resources committee then referred to a subcommittee **(Jan. 29, 2013)**

Medical Marijuana Home

Featured Resources

1. Should marijuana be a medical option?
2. Top 10 Pros and Cons
3. Did You Know?
4. Historical Timeline
5. Comments
+Pros & Cons by Category

Projects

6. 18 Legal Medical Marijuana States and DC
7. 12 States with Pending Legislation to Legalize Medical Marijuana
8. Teen Marijuana Use, 1999-2006
9. Deaths from Marijuana v. 17 FDA-Approved Drugs
10. 105 Peer-Reviewed Studies on Marijuana
11. Top 17 Hospitals' Positions on Medical Marijuana
12. Medical Marijuana Infographic
13. Opinion Polls/Surveys
14. 90 Physicians' Views on Medical Marijuana
15. 10 US Surgeons General and Their Views on Medical Marijuana, 1961-Present
16. Pharma Based on C
17. US Gov... on Medical Marijuana
18. Drug Tests - Methods of Detecting Cannabis Use
19. Major Court Cases (and Related Docs)
20. Ranking 20 Drugs and Alcohol by Overall Harm
21. 2012 Presidential Candidates' Positions on Medical Marijuana

Learn More

22. Source Biographies
23. Glossary
24. Notices Archive
25. Site Map
+ Additional Resources

Order

Michigan Supreme Court
Lansing, Michigan

April 3, 2013

Robert P. Young, Jr.,
Chief Justice

145816

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

JOHN TER BEEK,
Plaintiff-Appellee,

v

SC: 145816
COA: 306240
Kent CC: 10-011515-CZ

CITY OF WYOMING,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the July 31, 2012 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether the defendant city's zoning code ordinance, which prohibits any use that is contrary to federal law, state law, or local ordinance, is subject to state preemption by the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*; and (2) if so, whether the MMMA is subject to federal preemption by the federal Controlled Substances Act (CSA), 21 USC 801 *et seq.*, on either impossibility or obstacle conflict preemption grounds. See 21 USC 903.

Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

s0327

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 3, 2013

Clerk

Licensing & Regulation
Construction Codes
Corporations, Securities & Commercial Licensing
Fire Services
Health Care Services
Health Facilities
Health Professions
Long Term Care
Health Facilities Construction
Health Facilities Forms
Health Facilities & Long Term Care Publications
Health Professions Complaints
Health Professions Forms
Licensed Health Professionals
Professional Programs
Radiation Safety
Liquor Control Commission
Public Service Commission
All About LARA
Agencies, Bureaus & Commissions
Employment, Security & Workplace Safety
Michigan Administrative Hearing System
Office of Regulatory Reinvention

Michigan Medical Marihuana Program

The Michigan Medical Marihuana Program (MMMP) is a state registry program within the Health Professions Division in the Bureau of Health Care Services at the Michigan Department of Licensing and Regulatory Affairs. The program administers the Michigan Medical Marihuana Act as approved by Michigan voters on November 4, 2008. The program implements the statutory tenets of this act in such a manner that protects the public and assures the confidentiality of its participants.

NEW! Legislation passed amendments to the Michigan Medical Marihuana Act that are effective April 1, 2013. The Application, Minor Application, Physician Certification and Change Form have been revised to reflect these changes. Click here for forms.

The Frequently Asked Questions (FAQs) have also been updated to answer the many questions that you may have rearding the changes that will be effective April 1, 2013. Click here for FAQs.

Click on the links below to read the new legislation:

Public Act 460 of 2012 (House Bill 4856)
Public Act 512 of 2012 (House Bill 4851)
Public Act 514 of 2012 (House Bill 4834)

Helpful Information:

- **Do not send duplicate applications. This slows down the application process and creates problems for our staff.**
- **If you submitted your application prior to the end of November 2012 and have not received your registry ID card, please call 517-373-0395 and select option #3.**

Program Statistics as of 4/30/2013:

- 391,131 original and renewal applications received since April 6, 2009.
- 135,267 active registered qualified patients.
- 27,788 active registered primary caregivers.
- 36,737 applications denied – most due to incomplete application or missing documentation.
- Applications are reviewed within 15 days of receipt. Incomplete applications are denied and applicants are then notified of denial by certified and regular mail.
- Complete applications, change forms and reapplications for previous denials are then processed in the date order in which they are received. If a denial letter is not received then the application is deemed valid. The statute currently allows for a copy of a valid application submitted to serve as a valid registry identification if the card is not issued within 20 days of its submission to the department.
- The Notice of Approval will be sent only with the registry ID card. If the registry ID card is not received within 12 weeks of the department's receipt of a valid application, please call 517-373-0395 and select option #3.
- There is a reduced registration fee. For information on what documents must be submitted with the application click here for the Reduced Fee Eligibility Information.

About the Medical Marihuana Program
General Information
Physician Information
Law and Rules
Application Forms and Instructions
Frequently Asked Questions
Contact us
Petition Process for Additional Medical Conditions

Michigan.gov Home | LARA Home | State Web Sites | Office of Regulatory Reinvention | Spending & Accountability
Accessibility Policy | Link Policy | Privacy Policy | Security Policy | Michigan News | Michigan.gov Survey

MMP 3501 (Rev. 4/13)
Department of Licensing and Regulatory Affairs
Michigan Medical Marihuana Registry
P.O. Box 30083, Lansing, MI 48909
517-373-0395 · www.michigan.gov/mmp

FOR OFFICIAL USE ONLY

APPLICATION FORM
for Registry Identification Card

- *For Applicants/Patients 18 years of age or older*
- Please call our office if you have any questions
- Submit ALL documents in ONE envelope • We recommend the applicant/patient submit the application packet • Type or print legibly

PROOF OF MICHIGAN RESIDENCY IS REQUIRED

☐ NEW: I have **never applied** before **or** my registry ID card is **expired** ☐ RENEWAL: My current registry ID card is **not** expired

For Renewals: Check any Changes: ☐ Patient Address Change ☐ Caregiver Address Change ☐ Plant Possession
☐ Patient Adding or Changing to New Caregiver (List the new caregiver's information in Section B)
☐ Patient Name Change ☐ Caregiver Name Change (Documents required for name changes; see question #2 on page 2)

Section A: APPLICANT/PATIENT INFORMATION: *(REQUIRED)*

For Renewals: Current Card Registry ID Card Number: **P**_____ ☐ **Male** ☐ **Female**

Legal Name (First):_____ (MI):_____ (Last):_____

Social Security Number:_____ Date of Birth:_____

Mailing Address:_____ (if applicable) Apt/Lot #_____

City:_____ Zip:_____ Phone Number (with area code):_____

Alternate Phone Number (with area code):_____

A patient who is **18 years of age or older is not required to designate a caregiver**

► To add or change to a new caregiver or retain your current caregiver, you **must** complete Section B and refer to questions #8-9 on page 2.
► Leave Section B blank ONLY if you are **NOT** designating a caregiver.

Section B: PRIMARY CAREGIVER INFORMATION: *(IF APPLICABLE)*

For Renewals: If already registered to this patient, Current Registry ID Card Number: **C**_____ ☐ **Male** ☐ **Female**

Legal Name (First):_____ (MI):_____ (Last):_____

Social Security Number:_____ Date of Birth:_____

Mailing Address:_____ (if applicable) Apt/Lot #_____

City:_____ Zip:_____ Phone Number (with area code):_____

Alternate Phone Number (with area code):_____

Plant possession will default to the Applicant/Patient if neither or both boxes are checked in Section C.

Section C: PERSON ALLOWED TO POSSESS PATIENT'S MARIHUANA PLANTS: *(REQUIRED)*

SELECT ONLY ONE: ☐ APPLICANT/PATIENT <------ **OR** ------> ☐ PRIMARY CAREGIVER

MMP 3501 (Rev. 4/13)

Michigan Medical Marihuana Registry
APPLICATION FORM

To ensure this application is complete, the Applicant/Patient must answer YES to all of the applicable questions below:

1. Did you, the applicant/patient, answer all of the fields correctly and legibly in **Section A**?..... ☐ YES
2. **For renewals**, is a copy of documentation provided for a name change? (I.e., marriage/divorce decree, legal name change document, valid MI driver license or Michigan ID, etc)..... (if applicable) ☐ YES
3. Are all of the fields for the caregiver answered correctly and legibly in **Section B** (if you, the patient, designated a caregiver)?..... (if applicable) ☐ YES
4. Is only one box checked in **Section C** for person who is allowed to possess the patient's Marihuana plants?..... ☐ YES
5. Did you, the *applicant/patient,* sign and date this application in **Section D** below?..... (if #5 is NO, #6 must be YES) ☐ YES ☐ NO
6. **OR**, is a copy of a **Durable Power of Attorney for Health Care** or legal guardianship with signatory authority provided, if the applicant/patient is unable to sign this application?..... (if #6 is NO, #5 must be YES) ☐ YES ☐ NO
7. Is a valid, clear copy (front and back) of the ***applicant/patient's*** **Michigan driver license or Michigan ID** provided **OR** your **photo ID and Michigan voter registration** provided?..... ☐ YES
8. Is a valid, clear copy (front and back) of the ***caregiver's*** **Michigan driver license or Michigan ID** provided **OR** his/her **photo ID and Michigan voter registration** provided (if you, the applicant/patient, designated a caregiver in Section B)?..... (if applicable) ☐ YES
9. Is a copy of the **Caregiver Attestation,** correctly and legibly completed by the **caregiver**, provided (if you, the applicant/patient, designated a caregiver in Section B)?..... (if applicable) ☐ YES
10. Is the **Physician Certification** provided?..... ☐ YES
11. Is the $100.00 Registration Fee included, payable to State of Michigan-MMMP?..... (if #11 is NO, #12 must be YES) ☐ YES ☐ NO
    Enter the $100.00Check or Money Order #_____
12. **OR**, if you are eligible for the reduced fee, is the $25.00 Registration Fee included, payable to State of Michigan-MMMP? (Additional documents **required**-See #13)..... (if #12 is NO, #11 must be YES) ☐ YES ☐ NO
    Enter the $25.00 Check or Money Order #_____
13. Is the acceptable supporting documentation for the reduced fee included?..... (if applicable) ☐ YES
    Examples of acceptable supporting documentation for the reduced fee are available at www.michigan.gov/mmp.
14. Check the program you, the applicant/patient, are currently enrolled in which qualifies you for the reduced fee:
    ☐ Full Medicaid ☐ Social Security Disability ☐ Supplemental Security Income (SSI)
15. Make a copy for your records and mail only **one** complete application, the check or money order, and all required documentation **in one envelope** to: **Michigan Medical Marihuana Registry Program · PO Box 30083 · Lansing, MI 48909**

Section D: APPLICANT/PATIENT SIGNATURE & DATE: *(REQUIRED)*

By signing below, I attest that the information I have entered on this application is true and accurate:

▶ Signature of Applicant/Patient: X _____ **Date:** _____

WHAT TO EXPECT AFTER YOU SUBMIT YOUR APPLICATION:

1. When your application is received by our office it will be approved or denied within 15 business days.
2. If this application is denied, the patient will receive a certified letter of explanation. You can then resubmit a copy of the application, with all required documents, for reconsideration up to 2 years from the date the fee is received.
3. If this application is approved, it will be processed in the date order received. The patient, and caregiver if designated, will be issued and sent a registry ID card to the mailing address provided on this application.
4. **If you have not received a denial letter, an approval letter, or some form of notification within six (6) weeks from the date the MMP receives your valid application, please contact our office at 517-373-0395 and select option #3. Please allow a full 6 weeks.**
5. After submitting this application, any changes to your record (address, caregiver, name, etc.), prior to your registry ID card's expiration, should be submitted on a Change Form with the required fee. We recommend not submitting a Change Form within 60 days of submitting your renewal application.

MMP 3030 (Rev. 4/13)

Michigan Medical Marihuana Registry
Caregiver Attestation

PROOF OF MICHIGAN RESIDENCY IS REQUIRED

TYPE OR PRINT LEGIBLY

The person the applicant/patient is designating to be their primary caregiver must complete this form in its entirety. This form must be submitted by the applicant/patient along with his/her application or change form.

If the applicant/patient has never had a Michigan registry ID card or if the patient's card will expire within the next 60 days, they should submit this attestation with an application form. If the applicant/patient has recently submitted their application or renewal application, they should submit this attestation with a change form. If you have questions on which form to use, please contact the MMP at 517-373-0395.

DECLARATION: *(REQUIRED)*

I, _____, do hereby declare each of the
(Print CAREGIVER'S NAME above)
below statements are true and accurate:

The designated caregiver must initial each line below:

___ I am at least 21 years of age at the time I am signing this Attestation.

___ I acknowledge at the time I am signing this Attestation I am not a caregiver for more than 5 qualifying patients.

___ I will not possess more than 2.5 ounces of usable marihuana and 12 marihuana plants for this qualifying patient if the applicant/patient named below designates me to possess his/her marihuana plants on the application or change form submitted with this Attestation (see Section C of the application or change form).

___ I have provided a front and back copy of my Michigan driver license or Michigan state ID (OR a front and back copy of my photo ID and Michigan voter registration) to this applicant/patient to submit his/her application or change form.

___ I have never been convicted of ANY felony offense involving illegal drugs.

___ I have not been convicted of ANY felony offense within the past 10 years. (Attestations received on or after April 1, 2013)

___ I have never been convicted of ANY felony that is an assaultive crime as defined in Section 9a of Chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. (Attestations received on or after April 1, 2013)
Some examples are listed below (this is not an all-inclusive list). If you have questions, please seek legal counsel.

Threats/assault against employee of Family Independence Agency	Stalking or aggravated stalking	Felonious Assault
Assault with intent to do great bodily harm less than murder; assault by strangulation or suffocation	Assault with intent to commit felony not otherwise punished	Assault with intent to maim
Leading, taking, carrying away, decoying, or enticing away child under 14	Conduct proscribed under MCL 750.81 to 750.89 as felony; intent [to commit conduct against a pregnant individual in order to cause or which leads to a miscarriage or stillbirth, or other harm to the embryo or fetus]	Attempted murder, 1st or 2nd degree murder
Kidnapping/Prisoner taking person as hostage	Felonious Use of Explosives (MCL750.200-MCL750.212a)	Assault with intent to commit murder
Assault with intent to rob and steal; armed or unarmed	Terrorism: Violation of the Michigan Anti-Terrorism Act (MCL750.543a-750.543z)	Assault with intent to commit CSC or CSC 1st, 2nd, 3rd, or 4th degree
Use or possession of dangerous weapon		Carjacking
		Manslaughter
		Mayhem
		Larceny of money or other property

___ I understand that my caregiver registration will become null and void if I am convicted of a felony offense.

___ I am willing, able, and eligible to serve as the primary caregiver for:

Print Applicant/Patient's Name: _____

MMP 3030 (Rev. 4/13)

Michigan Medical Marihuana Registry
Caregiver Attestation

All fields below must be completed.

PRIMARY CAREGIVER INFORMATION: *(REQUIRED)*

Legal Name (First):_____ (MI):_____ (Last):_____

Social Security Number:_____ Date of Birth:_____

Mailing Address:_____ (if applicable) Apt/Lot #_____

City:_____ Zip:_____ Phone Number (with area code):_____

Alternate Phone Number (with area code):_____

List any maiden names or nick names used now or in the past that you, the caregiver (male or female) have used. Attach a separate page if more space is required.

OTHER NAMES USED BY CAREGIVER : *(IF APPLICABLE)*

Legal Name (First):_____ (MI):_____ (Last):_____

Legal Name (First):_____ (MI):_____ (Last):_____

Legal Name (First):_____ (MI):_____ (Last):_____

CAREGIVER DECLARATION: *(REQUIRED)*

I understand that it is necessary to secure a criminal conviction history as part of the screening process. I authorize this agency to use the information provided in this application to obtain a criminal conviction history file search from the Central Records Division of the Michigan Department of State Police or other law enforcement or judicial recordkeeping organization to verify if I have been convicted of any of the felony offenses that would make me ineligible to be a caregiver. I have not withheld information that might affect the decision to be made on this application. In signing this attestation, I am aware that a false statement or dishonest answer may be grounds for denial or revocation of my registration and that such misrepresentation is punishable by law. I declare that I am willing and able to serve as the primary caregiver for the below signed patient.

Signature of Caregiver: X_____ **Date:** _____

APPLICANT/PATIENT DECLARATION:

I declare that I am designating the above signed individual to be my caregiver. I have included this caregiver's name and information in Section B: Primary Caregiver on the enclosed application or change form. I have included a copy of this caregiver's Michigan driver license or Michigan state ID (OR his/her photo ID and Michigan voter registration) and this completed Caregiver Attestation.

Signature of Applicant/Patient: X_____ **Date:** _____

To ensure this attestation is complete, the caregiver must answer YES to all of the applicable questions below:

1. On page 1, did you, the caregiver, print your name in the designated area at the top?..... ☐ YES
2. On page 1, did you, the caregiver, initial each statement verifying your eligibility to be a caregiver?..... ☐ YES
3. On page 1, did you, the caregiver, print the patient's name in the designated area at the bottom?..... ☐ YES
4. On page 2, did you, the caregiver, complete all fields correctly and legibly?..... ☐ YES
5. On page 2, did you, the caregiver, enter all other previous and current names used? (if applicable)..... ☐ YES
6. On page 2, did the caregiver and patient sign in the appropriate designated areas?..... ☐ YES
7. Provide this Attestation to the applicant/patient to submit to the MMP with the appropriate application or change form

MMP 3020 (Rev. 4/13)

Michigan Medical Marihuana Registry
Physician Certification

• Please encourage patients to submit their application packets as soon as possible after you sign this certification.

This certification must be completed and signed by a Medical Doctor or Doctor of Osteopathic Medicine and Surgery fully licensed by the state of Michigan.
This certification does not constitute a prescription for marihuana.*

CERTIFYING PHYSICIAN INFORMATION: *(REQUIRED)* **TYPE OR PRINT LEGIBLY**

Physician Name (First):_____ (MI):_____ (Last):_____

Full Address:_____

Phone Number (with area code):_____

Michigan Physician License Number: ☐ M.D. 4301_____ *OR* ☐ D.O. 5101_____

DECLARATION:

The physician must initial each line below:

I do hereby declare I am in compliance with the Michigan Medical Marihuana Act, Section 3a, which includes all of the following:

___ I have reviewed this patient's relevant medical records and completed a full assessment of this patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of this patient. (MCL333.26423(a)(1))

___ I have created and will maintain records of this patient's condition in accord with medically accepted standards. (MCL333.26423(a)(2))

___ I have a reasonable expectation that I will provide follow-up care to this patient to monitor the efficacy of the use of medical marihuana as a treatment of this patient's debilitating medical condition. (MCL333.26423(a)(3))

___ If the patient (or for minor: parent/legal guardian) has given permission, I have notified this patient's primary care physician of this patient's debilitating medical condition and certification for the use of medical marihuana to treat that condition. (MCL333.26423(a)(4))

For Minor Patients ONLY:

___ I have explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian. (MCL333.26426(b)(1))

PATIENT INFORMATION: *(REQUIRED)* **TYPE OR PRINT LEGIBLY**

☐ Male ☐ Female Date of Birth:_____

Legal Name (First):_____ (MI):_____ (Last):_____

Date of this patient's in-person medical evaluation relating to this certification: _____

I certify that the above named patient has been diagnosed with the following debilitating medical condition (check appropriate box(es)): A checkbox must be selected below and/or on page 2 for this patient.

☐ Cancer
☐ Glaucoma
☐ HIV or AIDS Positive
☐ Hepatitis C
☐ Amyotrophic Lateral Sclerosis
☐ Crohn's Disease
☐ Agitation of Alzheimer's Disease
☐ Nail Patella

☐ Other condition not listed, which **has been approved** as a qualifying condition pursuant to the Medical Marihuana Review Panel (MCL 333.26425a) _____

Physician's Comments (if applicable): (Please Type or Print Legibly)

MMP 3020 (Rev. 4/13)

Michigan Medical Marihuana Registry
Physician Certification

I certify that the named patient on page 1 of this certification has been diagnosed with a medical condition or treatment that produces, for thi
patient, one or more of the following and which, in this physician's professional opinion, may be alleviated by the medical use of marihuana
(check appropriate box(es)):

- ☐ Cachexia or Wasting Syndrome
- ☐ Severe and Chronic Pain
- ☐ Severe Nausea
- ☐ Seizures (Including but not limited to those characteristic of Epilepsy.)
- ☐ Severe and Persistent Muscle Spasms (Including but not limited to those characteristic of Multiple Sclerosis.)

Legibly print the medical condition or treatment

_____

_____

_____

_____

_____

Physician's Comments (if applicable): **(Please Type or Print Legibly)**

_____

_____

_____

CERTIFICATION, SIGNATURE, & DATE: *(REQUIRED)*

I hereby certify that I am a physician licensed to practice in Michigan. It is my professional opinion that the applicant has been diagnosed with a debilitating medical condition as indicated on this form. The medical use of marihuana is likely to provide palliative or therapeutic benefits for the symptoms or effects of the patient's condition. This is not a prescription for the use of medical marihuana. Additionally, if the patient ceases to suffer from the above identified debilitating condition, I hereby certify I will notify the Department in writing.

Signature of Physician: X _____ **Date:** _____

(Fully licensed Michigan MD or DO only)

PRINT the name and telephone number of contact person at the physician's office to verify validity of this certification:

Name: _____ Phone Number (with area code): _____

To ensure this certification is complete, the physician must answer YES to all of the applicable questions below:

1. On page 1, is the physician information complete with all fields correctly and legibly typed or printed in the Certifying Physician Information section? ..... ☐ YES
2. On page 1, did you, the physician, initial each statement verifying compliance with the MMMA? ..... ☐ YES
3. On page 1, is the patient information complete with all fields correctly and legibly typed or printed in the Patient Information section? ..... ☐ YES
4. On page 1, did you, the physician, identify the qualifying debilitating medical condition(s) for this patient? (Either #4 or #5 must be checked YES) ..... ☐ YES
5. On page 2, did you, the physician, identify the qualifying diagnosis AND state the medical condition(s) or treatment for this patient? (Either #4 or #5 must be checked YES) ..... ☐ YES
6. On page 2, did you, the physician, sign the Certification in the appropriate designated area? ..... ☐ YES
7. Did you, the physician, give this Certification to the patient to submit with their application? ..... ☐ YES
8. Did you retain a copy of this Certification for this patient's records? ..... ☐ YES

Opinion

FILED FEBRUARY 8, 2013

STATE OF MICHIGAN

SUPREME COURT

STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON MCQUEEN and MATTHEW TAYLOR, doing business as COMPASSIONATE APOTHECARY, LLC,

Defendants-Appellants.

No. 143824

BEFORE THE ENTIRE BENCH (except MCCORMACK, J.)

YOUNG, C.J.

In this public nuisance action, we must determine whether defendants' business, which facilitates patient-to-patient sales of marijuana, operates in accordance with the provisions of the Michigan Medical Marihuana Act (MMMA).[1] We hold that it does not and that, as a result, the Court of Appeals reached the correct result when it ordered that defendants' business be enjoined as a public nuisance.

[1] MCL 333.26421 *et seq.*

The MMMA authorizes "[t]he medical use of marihuana . . . to the extent that it is carried out in accordance with the provisions of [the] act."[2] Section 3(e) of the act defines "medical use" broadly to include the "transfer" of marijuana "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition."[3] Because a transfer is "[*a*]*ny* mode of disposing of or parting with an asset or an interest in an asset, including . . . *the payment of money*,"[4] the word "transfer," as part of the statutory definition of "medical use," also includes sales. The Court of Appeals erred by concluding that a sale of marijuana was not a medical use.

Nevertheless, the immunity from arrest, prosecution, or penalty provided to a registered qualifying patient in § 4 of the MMMA for engaging in the medical use of marijuana can be rebutted upon a showing "that conduct related to marihuana was not for the purpose of alleviating *the* qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act."[5] Because the MMMA's immunity provision clearly contemplates that a registered qualifying patient's medical use of marijuana only occur for the purpose of alleviating *his own* debilitating medical condition or symptoms associated with his debilitating medical

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[2] MCL 333.26427(a).

[3] MCL 333.26423(e).

[4] Black's Law Dictionary (8th ed), p 1535 (emphasis added); see also *Random House Webster's College Dictionary* (2d ed, 1997), p 1366 (defining "transfer" as "to convey or remove from one place, person, or position to another").

[5] MCL 333.26424(d) (emphasis added).

condition, and not *another patient's* condition or symptoms, § 4 does not authorize a registered qualifying patient to transfer marijuana to another registered qualifying patient. Accordingly, while the Court of Appeals erred by excluding sales from the definition of "medical use," we affirm on alternative grounds its conclusion that the MMMA does not contemplate patient-to-patient sales of marijuana for medical use and that, by facilitating such sales, defendants' business constituted a public nuisance.

I. FACTS AND PROCEDURAL HISTORY

Defendants Brandon McQueen and Matthew Taylor own and operate C.A., LLC (hereinafter CA), formerly known as Compassionate Apothecary, LLC, a members-only medical marijuana dispensary located in Isabella County. McQueen is both a registered qualifying patient and a registered primary caregiver within the meaning of the MMMA,[6] while Taylor is a registered primary caregiver. Their stated purpose in operating CA is to "assist in the administration of [a] member patient's medical use" of marijuana.

CA requires every member to be either a registered qualifying patient or registered primary caregiver pursuant to § 6 of the MMMA and to possess a valid, unexpired medical marijuana registry identification card from the Michigan Department of Community Health (MDCH).[7] CA's basic membership fee of $5 a month allows a

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[6] A "qualifying patient" is defined in the MMMA as "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(h). A "primary caregiver" is defined as "a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs." MCL 333.26423(g). The patient and caregiver registration processes are outlined in MCL 333.26426.

[7] Moreover, according to defendants, a registered primary caregiver can only become a member if the caregiver's patient is also a member and authorizes the caregiver to

member to access CA's services. For an additional fee, a member can rent one or more lockers to store up to 2.5 ounces of marijuana and make that marijuana available to other CA members to purchase.[8] The member sets the sale price of his marijuana,[9] and defendants retain a percentage of that price (about 20 percent) as a service fee. Defendants and their employees retain access at all times to the rented lockers, although the member may remove his marijuana from the lockers during business hours if he no longer wishes to make it available for sale.[10]

All CA members may purchase marijuana from other members' lockers.[11] A member who wishes to purchase marijuana for himself (or, if the member is a registered primary caregiver, for his patient) must show his unexpired MDCH qualifying patient or primary caregiver registry identification card when entering CA. A representative of CA—either one of the individual defendants or an employee—will then take the member to the display room, where a variety of strains are available for purchase.[12] The member

---

become a member.

[8] In order to rent a locker, the member must expressly authorize CA to sell the marijuana stored in that locker to other CA members.

[9] The sale price of marijuana at CA ranges from $7 a gram to $20 a gram.

[10] Defendants supervised four employees, but it is not clear from the record whether the employees were either registered qualifying patients or registered primary caregivers.

[11] CA does not allow a member to purchase more than 2.5 ounces over a 14-day period.

[12] The police officer who initially made contact with defendants testified that, in addition to "displays of various marijuana with prices," the display room also contained brownies "and other ingestible products."

makes a selection, and the CA representative measures and weighs the marijuana, packages it, seals it, and records the transaction.

CA opened for business in May 2010. In July 2010, the Isabella County Prosecuting Attorney, on behalf of the state of Michigan, filed a complaint in the Isabella Circuit Court, alleging that defendants' business constitutes a public nuisance because it does not comply with the MMMA. The complaint sought a temporary restraining order, a preliminary injunction, and a permanent injunction. After holding a two-day evidentiary hearing, the circuit court denied plaintiff's request for a preliminary injunction. The court found that defendants "properly acquired registry identification cards," that they "allow only registered qualifying patients and registered primary caregivers to lease lockers," and that the patients or caregivers possess permissible amounts of marijuana in their lockers. Moreover, the court found that defendants themselves "do not possess amounts of marihuana prohibited by the MMMA."

The court further determined that "the registered qualifying patients and registered caregivers perform medical use of the marihuana by transferring the marihuana within the lockers to other registered qualifying patients and registered primary caregivers." The court noted that plaintiff had "failed to provide any evidence that defendants' medical marihuana related conduct was not for the purpose of alleviating any qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." As a result, "the patient-to-patient transfers and deliveries of marihuana between registered qualifying patients fall soundly within medical use of marihuana as defined by the MMMA." The court then determined that § 4 of the MMMA expressed the intent "to permit . . . patient-to-patient transfers and deliveries of marihuana between

registered qualifying patients in order for registered qualifying patients to acquire permissible medical marihuana to alleviate their debilitating medical conditions and their respective symptoms." Finally, it noted that "[e]ssentially, defendants assist with the administration and usage of medical marihuana, which the Legislature permits under the MMMA."[13]

The Court of Appeals reversed the circuit court's decision and remanded for entry of judgment in favor of plaintiff.[14] The Court concluded that two of the circuit court's findings of fact were clearly erroneous. First, it concluded that possession of marijuana is not contingent on having an ownership interest in the marijuana and that, because "defendants exercise dominion and control over the marijuana that is stored in the lockers," they "possess the marijuana that is stored in the lockers."[15] Second, the Court concluded that defendants were engaged in the selling of marijuana because defendants (or their employees) "intend for, make possible, and actively engage in the sale of marijuana between CA members," even though they do not themselves own the marijuana that they sell.[16]

The Court concluded that the MMMA does not allow patient-to-patient sales. After noting that the MMMA "has no provision governing the dispensing of

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[13] The court also noted that the issue of marijuana dispensaries "[was] not before the court" because this case involved "patient-to-patient transfers."

[14] *Michigan v McQueen*, 293 Mich App 644; 811 NW2d 513 (2011).

[15] *Id.* at 654.

[16] *Id.* at 655.

marijuana,"[17] the Court explained that the definition of "medical use" does not encompass the sale of marijuana, because it only allows the "delivery" and "transfer" of marijuana, not its sale, which "consists of the delivery or transfer *plus* the receipt of compensation."[18] In reaching this conclusion, the Court reasoned that § 4(e), which allows a caregiver to receive compensation but mandates that "[a]ny such compensation shall not constitute the sale of controlled substances,"[19] would be unnecessary if the definition of "medical use" encompassed sales.[20] Finally, the Court noted that defendants are not entitled to immunity under § 4(i) of the MMMA, which insulates from liability someone who assists a registered qualifying patient "with using or administering marihuana."[21] It explained that "[t]here is no evidence that defendants assist patients in preparing the marijuana to be consumed" or that they "physically aid the purchasing patients in consuming marijuana."[22] As a result, it concluded that plaintiff was entitled to a preliminary injunction, and it reversed the circuit court's ruling.

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[17] *Id.* at 663.

[18] *Id.* at 668.

[19] MCL 333.26424(e).

[20] *McQueen*, 293 Mich App at 669.

[21] MCL 333.26424(i).

[22] *McQueen*, 293 Mich App at 673.

This Court granted defendants' application for leave to appeal and requested that the parties brief "whether the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, permits patient-to-patient sales of marijuana."[23]

II. STANDARD OF REVIEW

We review for an abuse of discretion the decision to deny a preliminary injunction,[24] but we review de novo questions regarding the interpretation of the MMMA,[25] which the people enacted by initiative petition in November 2008.[26] "[T]he intent of the electors governs" the interpretation of voter-initiated statutes,[27] just as the intent of the Legislature governs the interpretation of legislatively enacted statutes.[28] The first step in interpreting a statute is to examine the statute's plain language, which provides "'the most reliable evidence of . . . intent . . . .'"[29] "If the statutory language is

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[23] *Michigan v McQueen*, 491 Mich 890 (2012).

[24] *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008).

[25] *People v Kolanek*, 491 Mich 382, 393; 817 NW2d 528 (2012).

[26] See Const 1963, art 2, § 9 ("The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative . . . .").

[27] *Kolanek*, 491 Mich at 405.

[28] *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011), citing *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

[29] *Sun Valley Foods*, 460 Mich at 236, quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981).

unambiguous, . . . '[n]o further judicial construction is required or permitted'" because we must conclude that the electors "'intended the meaning clearly expressed.'"[30]

A trial court's findings of fact may not be set aside unless they are clearly erroneous.[31] A ruling is clearly erroneous "if the reviewing court is left with a definite and firm conviction that the trial court made a mistake."[32]

III. ANALYSIS AND APPLICATION

In this nuisance action, we must examine whether the MMMA allows the patient-to-patient sales that defendants facilitate or, instead, whether plaintiff is entitled to an injunction pursuant to MCL 600.3801.

At the time this action was brought, MCL 600.3801 stated that "[a]ny building . . . used for the *unlawful* manufacture, transporting, sale, keeping for sale, bartering, or furnishing of any controlled substance as defined in [MCL 333.7104] . . . is declared a nuisance . . . ."[33] Marijuana is a controlled substance as defined in MCL 333.7104. However, because "[t]he medical use of marihuana is allowed under state law to the

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[30] *People v Cole*, 491 Mich 325, 330; 817 NW2d 497 (2012), quoting *Sun Valley Foods*, 460 Mich at 236 (alteration in original).

[31] MCR 2.613(C); *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

[32] *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011).

[33] Emphasis added. MCL 600.3805 allows the prosecuting attorney to maintain an action for equitable relief to abate a nuisance under MCL 600.3801. During the pendency of this case, the Legislature amended MCL 600.3801, but the operative language relevant to this case was unchanged. 2012 PA 352.

extent that it is carried out in accordance with [the MMMA],"[34] the MMMA controls whether defendants' business constitutes a public nuisance.

This Court first interpreted the MMMA in *People v Kolanek* and explained:

> The MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan. Possession, manufacture, and delivery of marijuana remain punishable offenses under Michigan law. Rather, the MMMA's protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent that the individuals' marijuana use "is carried out in accordance with the provisions of [the MMMA]."[35]

In contrast to several other states' medical marijuana provisions,[36] the MMMA does not explicitly provide for businesses that dispense marijuana to patients. Nevertheless, defendants claim that § 3(e) of the MMMA allows their business to facilitate patient-to-patient sales of marijuana. The Court of Appeals disagreed and held that the term

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[34] MCL 333.26427(a).

[35] *Kolanek*, 491 Mich at 394, quoting MCL 333.26427(a) (alteration in original).

[36] For instance, Colorado provides for and regulates "medical marijuana center[s]" that sell marijuana to registered medical marijuana patients. Colo Rev Stat 12-43.3-402. Similarly, Maine permits a registered medical marijuana patient to designate a not-for-profit dispensary that may provide marijuana for the patient and "[r]eceive reasonable monetary compensation for costs associated with assisting or for cultivating marijuana for a patient who designated the dispensary[.]" Me Rev Stat tit 22, § 2428(1-A). See also Ariz Rev Stat 36-2801(11) (defining "[n]onprofit medical marijuana dispensary" as "a not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders"); RI Gen Laws 21-28.6-3(2) (defining "[c]ompassion center" as "a not-for-profit corporation . . . that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies or dispenses marijuana, and/or related supplies and educational materials, to registered qualifying patients and/or their registered primary caregivers who have designated it as one of their primary caregivers").

"medical use," defined in § 3(e), does not encompass sales. We turn now to this provision.

A. "MEDICAL USE" OF MARIJUANA

As stated, § 7(a) of the MMMA provides that "[t]he medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of [the MMMA]." The MMMA specifically defines "medical use" in § 3(e) as

> the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.[37]

At issue in this case is whether the sale of marijuana is an activity that falls within this definition of "medical use." The definition specifically incorporates nine activities relating to marijuana as "medical use," but it does not expressly use the word "sale." Because of this omission, plaintiff argues, and the Court of Appeals held, that the sale of marijuana falls outside the statutory definition of "medical use":

> [T]he sale of marijuana is not equivalent to the delivery or transfer of marijuana. The delivery or transfer of marijuana is only one component of the sale of marijuana—the sale of marijuana consists of the delivery or transfer *plus* the receipt of compensation. The "medical use" of marijuana, as defined by the MMMA, allows for the "delivery" and "transfer" of marijuana, but not the "sale" of marijuana. MCL 333.26423(e). We may not ignore, or view as inadvertent, the omission of the term "sale" from the definition of the "medical use" of marijuana.[38]

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[37] MCL 333.26423(e).

[38] *McQueen*, 293 Mich App at 668.

Defendants claim that the Court of Appeals erred by excluding sales from the definition of "medical use."

In determining whether a sale constitutes "medical use," we first look to how the MMMA defines the term "medical use." In particular, the definition of "medical use" contains the word "transfer" as one of nine activities encompassing "medical use." The MMMA, however, does not itself define "transfer" or any of the other eight activities encompassing "medical use." Because undefined terms "shall be construed and understood according to the common and approved usage of the language,"[39] it is appropriate to consult dictionary definitions of terms used in the MMMA.[40]

A transfer is "[*a*]*ny* mode of disposing of or parting with an asset or an interest in an asset, including a gift, *the payment of money*, release, lease, or creation of a lien or other encumbrance."[41] Similarly, a sale is "[t]he *transfer* of property or title for a price."[42] Given these definitions, to state that a transfer does not encompass a sale is to ignore what a transfer encompasses. That a sale has an *additional* characteristic, distinguishing it from other types of transfers, does not make it any less a transfer, nor

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[39] MCL 8.3a.

[40] *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999).

[41] Black's Law Dictionary (8th ed), p 1535 (emphasis added); see also *Random House Webster's College Dictionary* (2d ed, 1997), p 1366 (defining "transfer" as "to convey or remove from one place, person, or position to another").

[42] Black's Law Dictionary (8th ed), p 1364 (emphasis added); see also *Random House Webster's College Dictionary* (2d ed, 1997), p 1143 (defining "sale" as "transfer of property for money or credit").

does that additional characteristic require that the definition of "medical use" separately delineate the term "sale" in order for a sale to be considered a medical use.

Nor do other provisions of the MMMA limit the definition of "medical use" to exclude sales. For instance, § 4(e) allows a registered primary caregiver to "receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana," but states that "[a]ny such compensation shall not constitute the sale of controlled substances."[43] While this section specifically contemplates that a registered qualifying patient may compensate his caregiver, it does not narrow the word "transfer" as used in the § 3(e) definition of "medical use."[44] Rather, § 4(e) independently describes the relationship between a registered caregiver and his registered qualifying patient and provides an additional protection for the patient-caregiver relationship by emphasizing that it is not a criminal act for a registered qualifying patient to compensate a registered primary caregiver for costs associated with providing marijuana to the patient.[45]

Additionally, § 4(k) establishes criminal sanctions for a patient or caregiver "who sells marihuana to someone who is not allowed to use marihuana for medical purposes under [the MMMA] . . . ."[46] This provision is also irrelevant to understanding the

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[43] MCL 333.26424(e).

[44] MCL 333.26423(e).

[45] Defendants claim that this provision excludes a caregiver's reimbursement from the provisions of the General Sales Tax Act, MCL 205.51 *et seq*. Because it is well beyond the scope of this case, we need not address that issue.

[46] A registered qualifying patient or registered primary caregiver who violates § 4(k) "shall have his or her registry identification card revoked and is guilty of a felony

definition of "medical use" in § 3(e). *Any* transfer to a person who is "not allowed to use marihuana for medical purposes"[47]—whether for a price or not—is already specifically excluded from the definition of "medical use," which requires a medical use to have the specific purpose to "treat or alleviate a *registered qualifying patient's* debilitating medical condition or symptoms associated with the debilitating medical condition."[48] Thus, rather than inform the definition of "medical use," § 4(k)[49] simply provides an additional criminal penalty for certain actions that *already* fall outside the definition of "medical use" and that are already barred under the Public Health Code.[50]

Therefore, we hold that the definition of "medical use" in § 3(e) of the MMMA includes the sale of marijuana. The Court of Appeals erred by concluding otherwise, and we reverse that portion of the Court of Appeals' judgment defining "medical use." Nevertheless, this definition of "medical use" only forms the beginning of our inquiry. Section 7(a) of the act requires *any* medical use of marijuana to occur "in accordance with the provisions of [the MMMA]." That limitation requires this Court to look beyond the definition of "medical use" to determine whether defendants' business operates "in

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punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both, in addition to any other penalties for the distribution of marihuana." MCL 333.26424(k).

[47] MCL 333.26424(k).

[48] MCL 333.26423(e) (emphasis added).

[49] MCL 333.26424(k).

[50] MCL 333.1101 *et seq*.

accordance with the provisions of [the MMMA]."[51] Absent a situation triggering the affirmative defense of § 8 of the MMMA,[52] § 4 sets forth the requirements for a person to be entitled to immunity for the "medical use" of marijuana. It is entitlement to that immunity—not the definition of "medical use"—that demonstrates that the person's medical use of marijuana is in accordance with the MMMA. Therefore, we turn to § 4 to determine whether patient-to-patient sales are entitled to that section's provision of immunity.

B. SECTION 4 IMMUNITY

Section 4(a) of the MMMA grants a "qualifying patient who has been issued and possesses a registry identification card"[53] immunity from arrest, prosecution, or penalty "for the medical use of marihuana in accordance with this act . . . ."[54] Similarly, § 4(b)

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[51] MCL 333.26427(a).

[52] These situations are limited to "any prosecution involving marihuana," MCL 333.26428(a), a "disciplinary action by a business or occupational or professional licensing board or bureau," MCL 333.26428(c)(1), or "forfeiture of any interest in or right to property," MCL 333.26428(c)(2). For further discussion of the § 8 affirmative defense, see part III(C) of this opinion.

[53] "'Qualifying patient' means a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(h).

[54] MCL 333.26424(a). Section 4(a) also conditions immunity on the patient's possession of "an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility." Section 4(a) is consistent in structure with § 6(a)(6), which requires a registered qualifying patient to designate "whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use." MCL 333.26426(a)(6). This determination is "based solely on the qualifying patient's preference." MCL 333.26426(e)(6).

grants the same immunity from arrest, prosecution, or penalty to "[a] primary caregiver who has been issued and possesses a registry identification card . . . for assisting a qualifying patient to whom he or she is connected through the [MDCH's] registration process with the medical use of marihuana in accordance with this act . . . ."[55]

Furthermore, § 4(d) creates a presumption of medical use, which informs how § 4 immunity can be asserted or negated:

> There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:
>
> (1) is in possession of a registry identification card; and
>
> (2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. *The presumption may be rebutted* by evidence that conduct related to marihuana *was not for the purpose of alleviating* ***the*** *qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition*, in accordance with this act.[56]

Because § 4(d) creates a presumption of medical use and then states how that presumption may be rebutted, we conclude that a rebutted presumption of medical use renders immunity under § 4 of the MMMA inapplicable.

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[55] MCL 333.26424(b). "'Primary caregiver' means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs." MCL 333.26423(g). Section 4(b) also conditions immunity on the patient's possession of an amount of marijuana that does not exceed 2.5 ounces of usable marijuana for each qualifying patient to whom the caregiver is connected through the MDCH's registration process, and, for each qualifying patient who has specified that a primary caregiver will be allowed under state law to cultivate marijuana for the qualifying patient, 12 marijuana plants kept in an enclosed, locked facility.

[56] MCL 333.26424(d) (emphasis added).

The text of § 4(d) establishes that the MMMA intends to allow "a qualifying patient or primary caregiver" to be immune from arrest, prosecution, or penalty *only* if conduct related to marijuana is "for the purpose of alleviating *the* qualifying patient's debilitating medical condition" or its symptoms. Section 4 creates a *personal* right and protection for a registered qualifying patient's medical use of marijuana, but that right is limited to medical use that has the purpose of alleviating that patient's *own* debilitating medical condition or symptoms. If the medical use of marijuana is for some *other* purpose—even to alleviate the medical condition or symptoms of *a different registered qualifying patient*—then the presumption of immunity attendant to the "medical use" of marijuana has been rebutted.

The dissent claims that the presumption of immunity attendant to the "medical use" of marijuana applies when a qualifying patient transfers marijuana to another qualifying patient. However, the dissent's construction is not consistent with the statutory language that the people of Michigan actually adopted.[57] The presumption that "a qualifying patient" is engaged in the medical use of marijuana under § 4(d) is rebutted when marijuana-related conduct is "not for the purpose of alleviating *the* qualifying patient's debilitating medical condition . . . ." Contrary to the dissent's conclusion that

[57] In concluding that our holding "is inconsistent with the purpose of the MMMA," *post* at 4, the dissent ignores that the purpose of any statutory text is communicated through the words actually enacted. By giving effect to the text of § 4(d), the Court *is* giving effect to the purpose of the MMMA. Similarly, the dissent's claim that qualifying patients "are, for all practical purposes, deprived of an additional route to obtain marijuana," *post* at 4, is irrelevant when the language of § 4(d) requires the conclusion that a transferor may not avail himself of immunity when the transfer is not to alleviate the transferor's debilitating medical condition.

§ 4(d) only requires "one of the two qualified patients involved in the transfer of marijuana [to] have a debilitating medical condition that the transfer of marijuana purports to alleviate,"[58] the definite article in § 4(d) refers to the qualifying patient who is asserting § 4 immunity, not to *any* qualifying patient involved in a transaction. While the introductory language of § 4(d) refers to "a" qualifying patient, that indefinite article simply means that any qualifying patient may claim § 4(d) immunity, as long as the marijuana-related conduct is related to alleviating "the" patient's medical condition.

Thus, § 4 immunity does not extend to a registered qualifying patient who transfers marijuana to another registered qualifying patient for the transferee's use[59] because the transferor is not engaging in conduct related to marijuana for the purpose of relieving *the transferor's own* condition or symptoms.[60] Similarly, § 4 immunity does not extend to a registered primary caregiver who transfers marijuana for any purpose other than to alleviate the condition or symptoms of a specific patient *with whom the caregiver is connected through the MDCH's registration process.*

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[58] *Post* at 3.

[59] Our interpretation of § 4(d) does not turn on the fact that the patient-to-patient transfers occurred for a price. Rather, § 4(d) acts as a limitation on what sort of "medical use" is allowed under the MMMA. The same limitation that prohibits a patient from selling marijuana to another patient also prohibits him from undertaking *any* transfers to another patient.

[60] Of course, a registered qualifying patient who acquires marijuana—whether from another registered qualifying patient or even from someone who is not entitled to possess marijuana—to alleviate *his own* condition can still receive immunity from arrest, prosecution, or penalty because the § 4(d) presumption cannot be rebutted on that basis. In this sense, § 4 immunity is asymmetric: it allows a registered qualifying patient to obtain marijuana for his own medical use but does not allow him to transfer marijuana for another registered qualifying patient's use.

Defendants' business facilitates patient-to-patient sales, presumably to benefit the transferee patient's debilitating medical condition or symptoms. However, those transfers do not qualify for § 4 immunity because they encompass marijuana-related conduct that is not for the purpose of alleviating the *transferor's* debilitating medical condition or its symptoms. Because the defendants' "medical use" of marijuana does not comply with the immunity provisions of §§ 4(a), 4(b), and 4(d), defendants cannot claim that § 4 insulates them from a public nuisance claim.

Nevertheless, defendants posit that, even if they are not entitled to immunity under § 4(d), § 4(i) permits their business to operate in accordance with the MMMA. Section 4(i) insulates a person from "arrest, prosecution, or penalty in any manner . . . solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana."[61] However, this provision does not apply to defendants' actions, nor does it apply to any patient-to-patient transfers of marijuana. First, defendants were not "solely . . . in the presence or vicinity of the medical use of marihuana" because they were actively facilitating patient-to-patient sales for pecuniary gain. Second, defendants were not "assisting a registered qualifying patient with using or administering marihuana." While they were assisting one registered qualifying patient with *acquiring* marijuana and another registered qualifying patient with *transferring* marijuana, they were not assisting *anyone* with *using* or *administering* marijuana.[62]

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[61] MCL 333.26424(i).

[62] Defendants specifically denied that they allowed any ingestion of marijuana to occur at CA.

Notably, § 4(i) does not contain the statutory term "medical use," but instead contains two of the nine activities that encompass medical use: "using" and "administering" marijuana. "Use" is defined as "to employ for some purpose; put into service[.]"[63] "Administer" is defined in the medicinal context as "to give or apply: *to administer medicine*."[64] In this context, the terms "using" and "administering" are limited to conduct involving the actual ingestion of marijuana. Thus, by its plain language, § 4(i) permits, for example, the spouse of a registered qualifying patient to assist the patient in ingesting marijuana, regardless of the spouse's status. However, § 4(i) does not permit defendants' conduct in this case. Defendants transferred and delivered marijuana to patients by facilitating patient-to-patient sales; in doing so, they assisted those patients in acquiring marijuana. The transfer, delivery, and acquisition of marijuana are three activities that are part of the "medical use" of marijuana that the drafters of the MMMA chose *not* to include as protected activities within § 4(i). As a result, defendants' actions were not in accordance with the MMMA under that provision.

C. SECTION 8 AFFIRMATIVE DEFENSE

Finally, even though § 4 does not permit defendants to operate a business that facilitates patient-to-patient sales of marijuana, our decision in *Kolanek* makes clear that § 8 provides separate protections for medical marijuana patients and caregivers and that one need not satisfy the requirements of § 4 immunity to be entitled to the § 8 affirmative

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[63] *Random House Webster's College Dictionary* (2d ed, 1997), p 1414.

[64] *Id.* at 17.

defense,[65] which allows "a patient and a patient's primary caregiver, if any, [to] assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana . . . ."[66] However, by its own terms, § 8(a) only applies "as a defense to any *prosecution* involving marihuana . . . ."[67] The text and structure of § 8 establish that the drafters and voters intended that "prosecution" refer only to a criminal proceeding. Specifically, § 8(b) explains that a person "may assert the medical purpose for using marihuana in a *motion to dismiss*, and the *charges* shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a)."[68] As a result, § 8 does not provide defendants with a basis to assert that their actions are in accordance with the MMMA.

Although it did so for a different reason than the one we articulate, the Court of Appeals reached the correct conclusion that defendants are not entitled to operate a business that facilitates patient-to-patient sales of marijuana. Because the business model of defendants' dispensary relies entirely on transactions that do not comply with the

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[65] *Kolanek*, 491 Mich at 403.

[66] MCL 333.26428(a).

[67] *Id.* (emphasis added).

[68] MCL 333.26428(b) (emphasis added). This limitation is further supported by the explicit exceptions that allow a person to assert the § 8 affirmative defense outside the criminal context. Section 8(c) allows a patient or caregiver to assert a patient's medical purpose for using marijuana outside the context of criminal proceedings, but only as a defense to "disciplinary action by a business or occupational or professional licensing board or bureau" or the "forfeiture of any interest in or right to property." MCL 333.26428(c). This case does not represent one of the two limited exceptions contained in § 8(c).

MMMA, defendants are operating their business in "[a] building . . . used for the unlawful . . . keeping for sale . . . or furnishing of any controlled substance," and plaintiff is entitled to an injunction enjoining the continuing operation of the business because it is a public nuisance.[69]

IV. CONCLUSION

Because we conclude that defendants' business does not comply with the MMMA, we affirm the Court of Appeals' decision on alternative grounds. While the sale of marijuana constitutes "medical use" as the term is defined in MCL 333.26423(c), § 4 of the MMMA, MCL 333.26424, does not permit a registered qualifying patient to transfer marijuana for another registered qualifying patient's medical use. Plaintiff is thus entitled to injunctive relief to abate a violation of the Public Health Code.

Robert P. Young, Jr.
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra

[69] Former MCL 600.3801.

APPENDIX

As an aid to judges, practitioners, and the public, we provide the following summary of our holdings in this case:

(1) The term "medical use," as defined in § 3(e) of the Michigan Medical Marihuana Act (MMMA), MCL 333.26423(e), encompasses the sale of marijuana "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition."

(2) To be eligible for immunity under § 4 of the MMMA, MCL 333.26424, a registered qualifying patient must be engaging in marijuana-related conduct for the purpose of alleviating the patient's *own* debilitating medical condition or symptoms associated with the debilitating medical condition.

(3) To be eligible for § 4 immunity, a registered primary caregiver must be engaging in marijuana-related conduct for the purpose of alleviating the debilitating medical condition, or symptoms associated with the debilitating medical condition, of a registered qualifying patient to whom the caregiver is connected through the registration process of the Michigan Department of Community Health (MDCH).

(4) As a result, § 4 does not offer immunity to a registered qualifying patient who transfers marijuana to another registered qualifying patient, nor does it offer immunity to a registered primary caregiver who transfers marijuana to anyone other than a registered qualifying patient to whom the caregiver is connected through the MDCH's registration process.

(5) Section 4(i), MCL 333.26424(i), permits any person to assist a registered qualifying patient with "using or administering" marijuana. However, the terms "using" and "administering" are limited to conduct involving the actual ingestion of marijuana.

(6) The affirmative defense of § 8 of the MMMA, MCL 333.26428, applies only to criminal prosecutions involving marijuana, subject to the limited exceptions contained in § 8(c) for disciplinary action by a business or occupational or professional licensing board or bureau or forfeiture of any interest in or right to property.

STATE OF MICHIGAN

SUPREME COURT

STATE OF MICHIGAN,

Plaintiff-Appellee,

v

No. 143824

BRANDON MCQUEEN and MATTHEW TAYLOR, doing business as COMPASSIONATE APOTHECARY, LLC,

Defendants-Appellants.

CAVANAGH, J. (*dissenting*).

I respectfully disagree with the majority's interpretation of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq*. In my view, § 4(d)(2) of the act, MCL 333.26424(d)(2), does not limit the definition of "medical use" of marijuana set forth in § 3(e) of the act, MCL 333.26423(e), so that a qualified patient who transfers marijuana to another qualified patient is precluded from asserting immunity under § 4(a) of the act, MCL 333.26424(a). Rather, I would hold that when a qualified patient transfers marijuana to another qualified patient, both individuals have the right to assert immunity under § 4 of the act, MCL 333.26424. Furthermore, as a result of the majority's erroneous interpretation of § 4, the majority improperly concludes that any facilitation of the transfer of marijuana from patient to patient is unlawful and enjoinable as a nuisance.

As the majority explains, defendants' activity falls under the definition of "medical use" of marijuana set forth in § 3(e) of the act, which states that "medical use"

means "the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, *transfer*, or transportation of marihuana . . . to treat or alleviate a registered qualifying patient's debilitating medical condition . . . ." MCL 333.26423(e) (emphasis added). However, the majority erroneously concludes that *only* the qualified patient who receives marijuana is entitled to assert § 4 immunity in light of its interpretation of § 4(d)(2). Section 4(d) of the act provides a presumption that "a qualifying patient or primary caregiver is engaged in the medical use of marihuana" when certain conditions are met. MCL 333.26424(d). However, under § 4(d)(2), that presumption may be rebutted with evidence that the "conduct related to marihuana was not for the purpose of alleviating *the* qualifying patient's debilitating medical condition . . . ." MCL 333.26424(d)(2) (emphasis added). The majority reasons that the reference to "the" qualified patient requires the conclusion that only the recipient of marijuana is entitled to § 4 immunity for a patient-to-patient transfer of marijuana because only the transferee's medical condition may be alleviated as a result of the transfer.

I disagree with this interpretation because it is inconsistent with the rules of statutory interpretation. When interpreting the MMMA, "[w]e must give the words of the MMMA their ordinary and plain meaning as would have been understood by the electorate." *People v Kolanek*, 491 Mich 382, 397; 817 NW2d 528 (2012), citing *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004). It is true that, in order for the § 4(d) presumption to apply, the marijuana-related conduct at issue must be for the purpose of alleviating the medical condition or symptoms of the qualified patient who in fact suffers from a debilitating medical condition. However, when a qualified patient transfers marijuana to another qualified patient, the transferor is also engaged in

marijuana-related conduct for the purpose of alleviating the medical condition of the qualified patient who is also involved in the transfer and is suffering from a debilitating medical condition. The marijuana-related conduct is the transfer of marijuana, which is expressly included in the definition of "medical use" of marijuana. MCL 333.26423(e). Thus, the reference in § 4(d)(2) to "the" qualifying patient simply requires that one of the two qualified patients involved in the transfer of marijuana have a debilitating medical condition that the transfer of marijuana is intended to alleviate.

Moreover, when interpreting a statute, "[a] court should consider the plain meaning of a statute's words and their placement and purpose in the statutory scheme." *McCormick v Carrier*, 487 Mich 180, 192; 795 NW2d 517 (2010) (citation and quotation marks omitted). The majority's singular reliance on the reference in § 4(d)(2) to "the" qualifying patient ignores the fact that § 4(a) and the introductory language of § 4(d) refer to "a" qualifying patient. Therefore, when § 4(d)(2) is viewed in the context of § 4 in its entirety, it is clear that *any* qualified patient "who has been issued and possesses a registry identification card" has the right to assert § 4 immunity. MCL 333.26424(a).

The majority characterizes its holding as creating "asymmetric" immunity under § 4 because it permits a qualified patient who receives marijuana to assert immunity, but a qualified patient who transfers marijuana is not entitled to the same protection. *Ante* at 18 n 60. Thus, under the majority's holding, a qualified patient's right to receive marijuana is effectively extinguished because a patient-to-patient transfer of marijuana can never occur lawfully for both qualifying patients. I cannot conclude from the plain meaning of the language of the MMMA that the electorate intended to afford a person a right only to foreclose any real possibility that the person may benefit from that right.

Furthermore, the majority's view is inconsistent with the purpose of the MMMA—to promote the "health and welfare of [Michigan] citizens"—because qualified patients who are in need of marijuana for medical use, yet do not have the ability to either cultivate marijuana or find a trustworthy primary caregiver, are, for all practical purposes, deprived of an additional route to obtain marijuana for that use—another qualified patient's transfer. MCL 333.26422(c).

Lastly, the majority's erroneous interpretation of § 4(d) leads the majority to an inadequate analysis regarding its ultimate conclusion that defendants' facilitation of the transfer of marijuana is enjoinable under MCL 600.3801 and MCL 600.3805 as a public nuisance.[1] Because I would conclude that the MMMA does not exclude patient-to-patient transfers of marijuana from the immunity afforded under § 4 of the act, the next inquiry should be whether the *facilitation* of the transfer of marijuana falls under the act's definition of "medical use" of marijuana, which, if so, means that a qualified patient who facilitates the transfer of marijuana has the right to assert immunity under § 4(a) and is entitled to the presumption that he or she was engaged in the medical use of marijuana under § 4(d).[2] The majority skims over this question by employing the same flawed

[1] MCL 600.3801(1)(c) states that a building may be declared a nuisance if "[i]t is used for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of a controlled substance."

[2] Notably, the same analysis is not equally applicable to primary caregivers because while § 4(b) allows primary caregivers to assert immunity for the medical use of marijuana, that immunity is conditioned by the fact that the caregiver must be "assisting a qualifying patient to whom he or she is connected through the department's registration process . . . ." MCL 333.26424(b). Similarly, a qualified patient's right to assert § 4 immunity is conditioned on additional requirements apart from the requirement that he or she was engaging in the medical use of marijuana.

reasoning that it uses to conclude that the MMMA does not permit patient-to-patient transfers of marijuana—that the transfers of marijuana that defendants facilitated are only subject to immunity to the extent that the recipient of the marijuana may assert the immunity. Thus, not only has the majority improperly limited a qualified patient's right to receive marijuana for medical use from another qualified patient, as previously explained, but the majority also holds that virtually all medical-marijuana dispensaries are illegal and thus enjoinable as a nuisance because those operations facilitate patient-to-patient transfers of marijuana.

In sum, I respectfully disagree with the majority's interpretation of § 4(d)(2), which limits the definition of "medical use" of marijuana as set forth in § 3(e) because that interpretation erroneously precludes a qualified patient who transfers marijuana to another qualified patient from asserting § 4 immunity. Rather, I would hold that both qualified patients involved in a patient-to-patient transfer of marijuana have the right to assert immunity and are entitled to immunity if they meet the specific requirements of § 4. Thus, I also disagree with the majority's conclusion that any facilitation of a patient-to-patient transfer of marijuana is enjoinable as a nuisance.

Michael F. Cavanagh

MCCORMACK, J., took no part in the decision of this case.

Michigan Supreme Cour
Lansing, Michigar

Syllabus

PEOPLE v KOON

Docket No. 145259. Decided May 21, 2013.

Rodney Lee Koon was charged in the 86th District Court with operating a motor vehicle with any amount of a schedule 1 controlled substance in his body in violation of MCL 257.625(8). When defendant was stopped for speeding, he informed the police officer that he had a medical marijuana registry card and admitted that he had smoked marijuana five to six hours earlier. A blood test showed that defendant had tetrahydrocannabinol (THC), the physiologically active component of marijuana, in his bloodstream when operating the vehicle. The court, Thomas J. Phillips, J., concluded that defendant's registration under the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, protected him from prosecution under MCL 257.625(8) unless the prosecution was able to prove that defendant was actually impaired by the presence of marijuana in his body. The Grand Traverse Circuit Court, Philip E. Rodgers, Jr., J., affirmed that ruling, concluding that the MMMA superseded the zero-tolerance provision of MCL 257.625(8). The prosecution appealed by leave granted. The Court of Appeals, SAWYER, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ., reversed, noting that the MMMA prohibits registered medical marijuana patients from operating a motor vehicle while under the influence of marijuana and reasoning that under MCL 257.625(8) a person is under the influence of marijuana if he or she has any amount of marijuana in his or her body. 296 Mich App 223 (2012). Defendant sought leave to appeal.

In a unanimous opinion per curiam, the Supreme Court, in lieu of granting leave to appeal and without oral argument, *held*:

Under the MMMA, a qualifying registered patient is not subject to arrest, prosecution, or penalty for the medical use of marijuana in accordance with the act, provided that the patient possesses an amount of usable marijuana that does not exceed 2.5 ounces. The statutory definition of "medical use" includes internal possession. Therefore, the MMMA shields registered patients from prosecution for the internal possession of marijuana, provided that the patient does not otherwise possess more than 2.5 ounces of usable marijuana. MCL 333.26427(b), however, provides a list of activities that are not protected by the MMMA, which includes driving while under the influence. Engaging in those activities removes a registered patient from the MMMA's protection because the patient is no longer acting in accordance with the MMMA. The MMMA does not define what it means to be "under the influence," but the phrase clearly contemplates something more than having any amount of marijuana in one's system and requires some effect on the person. Thus, the MMMA's protections extend to a

registered patient who internally possesses marijuana while operating a vehicle unless the patient is under the influence of marijuana. The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marijuana in his or her system but is not otherwise under the influence of marijuana inescapably conflicts with MCL 257.625(8), which prohibits a person from driving with any amount of marijuana in her or system. Under the MMMA, all other acts and parts of acts inconsistent with the MMMA do not apply to the medical use of marijuana. Consequently, MCL 257.625(8) does not apply to the medical use of marijuana. The Court of Appeals incorrectly concluded that defendant could be convicted under MCL 257.625(8) without proof that he had acted in violation of the MMMA by operating a motor vehicle while under the influence of marijuana.

Judgment of the Court of Appeals reversed, judgment of the Grand Traverse Circuit Court reinstated, and case remanded to the district court for further proceedings.

Opinion

STATE OF MICHIGAN

SUPREME COURT

FILED MAY 21, 2013

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY LEE KOON,

Defendant-Appellant.

No. 145259

PER CURIAM.

The Michigan Medical Marihuana Act (MMMA)[1] prohibits the prosecution of registered patients who internally possess marijuana, but the act does not protect registered patients who operate a vehicle while "under the influence" of marijuana. The Michigan Vehicle Code[2] prohibits a person from driving with any amount of a schedule 1 controlled substance, a list that includes marijuana, in his or her system. This case requires us to decide whether the MMMA's protection supersedes the Michigan Vehicle

[1] MCL 333.26421 *et seq.*

[2] MCL 257.1 *et seq.*

Code's prohibition and allows a registered patient to drive when he or she has indications of marijuana in his or her system but is not otherwise under the influence of marijuana. We conclude that it does. Accordingly, in lieu of granting leave to appeal, we reverse the judgment of the Court of Appeals, reinstate the judgment of the Grand Traverse Circuit Court, and remand this case to the 86th District Court for further proceedings not inconsistent with this opinion.

Defendant, Rodney Lee Koon, was stopped for speeding in Grand Traverse County. During the traffic stop, defendant voluntarily produced a marijuana pipe and informed the arresting officer that he was a registered patient under the MMMA and was permitted to possess marijuana. A blood test to which defendant voluntarily submitted several hours later revealed that his blood had a THC[3] content of 10 nanograms per milliliter (ng/ml).

The prosecution charged defendant with operating a motor vehicle with the presence of a schedule 1 controlled substance in his body under MCL 257.625(8). The prosecution sought a jury instruction that the presence of marijuana in defendant's system resulted in a per se violation of the Michigan Vehicle Code. Defendant argued that the zero-tolerance provision could not possibly apply to MMMA registered patients because the MMMA prevents the prosecution of registered patients for the medical use of marijuana, including internal possession,[4] and only withdraws its protection when the

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[3] Tetrahydrocannabinol, or THC, is the physiologically active component of marijuana. See *Stedman's Medical Dictionary* (26th ed), p 1791.

[4] MCL 333.26423(f); MCL 333.26424(a).

patient drives while "under the influence" of marijuana.[5] Moreover, the MMMA resolves conflicts between all other acts and the MMMA by exempting the medical use of marijuana from the application of any inconsistent act.[6]

The district court and circuit court agreed with defendant. Both courts concluded that the MMMA's prohibition against driving while under the influence of marijuana was inconsistent with the Michigan Vehicle Code's zero-tolerance provision, that the MMMA superseded the zero-tolerance provision, and that defendant was protected from prosecution unless the prosecution could prove that he was impaired by the presence of marijuana in his body. The Court of Appeals reversed,[7] reasoning that the MMMA yielded to the Legislature's determination, as set forth in MCL 257.625(8), that it is unsafe for a person to drive with *any* marijuana in his or her system. The Court of Appeals explained that

> while the MMMA does not provide a definition of "under the influence of marijuana," MCL 257.625(8) essentially does, establishing that any amount of a schedule 1 controlled substance, including marijuana, sufficiently influences a person's driving ability to the extent that the person should not be permitted to drive.[8]

Thus, the Court of Appeals determined that the MMMA permitted defendant's prosecution under the zero-tolerance statute even though he possessed a valid medical marijuana registration card. We now reverse.

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[5] MCL 333.26427(b)(4).

[6] MCL 333.26427(e).

[7] *People v Koon*, 296 Mich App 223; 818 NW2d 473 (2012).

[8] *Id.* at 227-228.

The statute under which the prosecution charged defendant prohibits a person from driving with any amount of marijuana in his or her system:

> A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214.[9]

Despite the MMMA's enactment, marijuana remains a schedule 1 controlled substance.[10]

The MMMA, rather than legalizing marijuana, functions by providing registered patients with immunity from prosecution for the medical use of marijuana:

> A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner . . . for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana . . . .[11]

The statutory definition of "medical use" includes "internal possession."[12] Therefore, the MMMA shields registered patients from prosecution for the internal possession of marijuana, provided that the patient does not otherwise possess more than 2.5 ounces of usable marijuana.

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[9] MCL 257.625(8).

[10] MCL 333.7212(1)(c).

[11] MCL 333.26424(a).

[12] MCL 333.26423(f).

But the MMMA does not provide carte blanche to registered patients in their use of marijuana. Indeed, MCL 333.26427(b) provides a list of activities that are not protected by the MMMA. Engaging in one of those activities removes a registered patient from the MMMA's protection because he or she is no longer acting in accordance with the MMMA.[13] One prohibited activity is driving while under the influence of marijuana:

> This act shall not permit any person to do any of the following:
>
> * * *
>
> (4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

The MMMA, however, does not define what it means to be "under the influence" of marijuana. While we need not set exact parameters of when a person is "under the influence," we conclude that it contemplates something more than having any amount of marijuana in one's system and requires some effect on the person.[14] Thus, taking the MMMA's provisions together, the act's protections extend to a registered patient who internally possesses marijuana while operating a vehicle unless the patient *is* under the

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[13] See MCL 333.26427(a).

[14] Significantly, "under the influence" is a term of art used in other provisions of the Michigan Vehicle Code. See, e.g., MCL 257.625(1)(a) (stating that a person is "operating while intoxicated" if he or she is "under the influence of . . . a controlled substance . . ."). See also *People v Lambert*, 395 Mich 296, 305; 235 NW2d 338 (1975) (concluding that an acceptable jury instruction for "driving under the influence of intoxicating liquor" included requiring proof that the person's ability to drive was "substantially and materially affected"); Black's Law Dictionary (9th ed), p 1665 (defining "under the influence" as "deprived of clearness of mind and self-control because of drugs or alcohol").

influence of marijuana. In contrast, the Michigan Vehicle Code's zero-tolerance provision prohibits the operation of a motor vehicle by a driver with an infinitesimal amount of marijuana in his or her system even if the infinitesimal amount of marijuana has no influence on the driver.

The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marijuana in his or her system but is not otherwise under the influence of marijuana inescapably conflicts with the Michigan Vehicle Code's prohibition against a person driving with any amount of marijuana in his or her system. When the MMMA conflicts with another statute, the MMMA provides that "[a]ll other acts and parts of acts inconsistent with [the MMMA] do not apply to the medical use of marihuana . . . ."[15] Consequently, the Michigan Vehicle Code's zero-tolerance provision, MCL 257.625(8), which is inconsistent with the MMMA, does not apply to the medical use of marijuana. The Court of Appeals incorrectly concluded that defendant could be convicted under MCL 257.625(8) without proof that he had acted in violation of the MMMA by "operat[ing] . . . [a] motor vehicle . . . while under the influence" of marijuana.[16] If defendant is shown to have been under the influence of marijuana, then the MMMA's protections will not apply, and the prosecution may seek to convict defendant under any statute of which he was in violation, including MCL 257.625(8).[17]

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[15] MCL 333.26427(e).

[16] MCL 333.26427(b)(4).

[17] Indeed, if defendant is subsequently shown at trial to have been under the influence of marijuana, he would also necessarily have been in violation of MCL 257.625(1), which prohibits a person from operating a vehicle while intoxicated and defines "operating while intoxicated" as operating a vehicle while "under the influence of . . . a controlled

It goes almost without saying that the MMMA is an imperfect statute, the interpretation of which has repeatedly required this Court's intervention.[18] Indeed, this case could have been easily resolved if the MMMA had provided a definition of "under the influence."[19] As the Legislature contemplates amendments to the MMMA, and to the extent it wishes to clarify the specific circumstances under which a registered patient is per se "under the influence" of marijuana, it might consider adopting a "legal limit," like that applicable to alcohol,[20] establishing when a registered patient is outside the MMMA's protection.[21]

In sum, we conclude that the MMMA is inconsistent with, and therefore supersedes, MCL 257.625(8) unless a registered qualifying patient loses immunity because of his or her failure to act in accordance with the MMMA.[22] Accordingly, in lieu

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substance . . . ."

[18] See, e.g., *People v Kolanek*, 491 Mich 382; 817 NW2d 528 (2012); *People v Bylsma*, 493 Mich 17; 825 NW2d 543 (2012); *Michigan v McQueen*, 493 Mich 135; 828 NW2d 644 (2013).

[19] Presently, under the Michigan Vehicle Code, whether a person was under the influence at the time of a violation is a question for the finder of fact. See MCL 257.625(18) (requiring a written finding from the jury or a finding from the court when the defendant is convicted without a jury regarding whether the person was "under the influence of a controlled substance").

[20] See MCL 257.625(1)(b) (establishing 0.08 grams of alcohol per 100 milliliters of blood as the legal limit).

[21] For example, Washington has set a legal limit for the blood concentration of THC at 5 ng/ml. See Wash Rev Code 46.61.502(1)(b). Notably, defendant's THC level was 10 ng/ml.

[22] While neither party raised the issue, we conclude that the MMMA's enactment without republishing MCL 257.625(8) did not run afoul of Const 1963, art 4, § 25, which states

of granting leave to appeal, we reverse the judgment of the Court of Appeals, reinstate the judgment of the Grand Traverse Circuit Court, and remand this case to the 86th District Court for further proceedings not inconsistent with this opinion.

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that "[n]o law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." Assuming, without deciding, that this provision applies to voter-initiated laws, we conclude that the MMMA is an "act complete in itself" and, therefore, falls within a well-settled exception to Const 1963, art 4, § 25. *People ex rel Drake v Mahaney*, 13 Mich 481, 497 (1865) ("But an act complete in itself is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent."). See also *In re Constitutionality of 1972 PA 294*, 389 Mich 441, 477; 208 NW2d 469 (1973) (concluding that the no-fault insurance act was an act complete in itself and, thus, did not violate Const 1963, art 4, § 25, though it affected provisions that were not republished).